

TOWN OF AMHERST BOARD OF ZONING APPEALS BY-LAWS

(Originally adopted June 11, 1996; amended to reflect changes in the Town Code)

ARTICLE 1 - OBJECTIVES

This Board has been established in accordance with §15.2-2308 of the Code of Virginia and §18.1-1402 of the Code of the Town of Amherst. The provisions of these by-laws are intended to facilitate the powers and the duties of the Board in accordance with these statutes.

ARTICLE 2 - APPLICATIONS

All applications for decisions by the Board shall be transmitted to the Secretary and shall include, as a minimum:

- A. Cover letter
- B. Signed application on a form provided by the Secretary
- C. Site plan or other appropriate drawings
- D. Application fee required by law (Per §18.1-1009, \$150 for variance, \$300 for other)

Upon receiving a full application, the Secretary immediately report same to the Chairman who shall have the authority to set a public hearing date and authorize the required advertisement.

Applicants shall be advised that several weeks are normally required between application and decision by the Board. This is due to the public notice requirements for hearings by the Board as contained in §15.2-2204 of the Code of Virginia, arranging the meeting of the Board, and requests for additional information not available at the hearing. The Code of Virginia requires action by the Board within 90 days of receipt of the application.

ARTICLE 3 - MEETINGS

Meetings shall be called at the request of the Chairman or a quorum of the Board's membership. Written notice stating time and place of meetings shall be given to each member prior to the meeting.

The order of business for a meeting shall be as follows:

1. Call to Order by Chairman
2. Determination of quorum
3. Confirmation of minutes of previous meeting
4. Public Hearings
 - A. Report by Secretary
 - B. Statements by Applicant
 - C. Statements by other interested parties
 - D. Questions from Board Members
5. Unfinished Business
6. New Business
7. Adjournment

ARTICLE 4 - RULES

These by-laws shall remain in full force and effect unless changed by a vote of the full membership of the Board of Zoning Appeals.

(Reference: Chapter 18.1 of the Town Code, available online at www.amherstva.gov)



APPLICATION FOR VARIANCE
TOWN OF AMHERST BOARD OF ZONING APPEALS
POST OFFICE BOX 280
AMHERST, VIRGINIA 24521
(434) 946-7885

DATE _____

APPLICANT _____ OWNER _____
ADDRESS _____ ADDRESS _____
CITY _____ CITY _____
TELEPHONE NO. _____ TELEPHONE NO. _____

REPRESENTATIVE _____ ADDRESS _____
CITY _____ TELEPHONE NO. _____

LOCATION OF REQUEST _____

TAX MAP NO. _____ LOT AREA _____ ZONE _____

PROPOSED USE _____

QUESTIONS TO BE ANSWERED BY APPLICANT

1. Which of the following special conditions necessitates a variance?
☐ Exceptional narrowness, shallowness, size or shape of property.
☐ Exceptional topographic conditions or other extraordinary conditions of property.
☐ Exceptional conditions of adjacent property.
2. In what way would the strict application of the Zoning Ordinance produce undue hardship that is not shared generally by other properties in the same zoning district and the same vicinity?
3. What effect would the variance have on adjacent property? Would the proposal be detrimental to adjacent property or change the character of the district?

Please attach sketches and other detailed information to this application.

Applicants are reminded that §18.1-1002 of the Town Code requires signs describing the action requested under this application to be posted on the property.

As owner of the property listed above, I hereby petition the Board of Zoning Appeals to grant a variance as described herein.

Signature of Owner

Date

BOARD OF ZONING APPEALS PUBLIC HEARING

Date

Time

BOARD OF ZONING APPEALS ACTION:

Zoning Administrator

Date

Adjacent property owner information for

Special Use Permit Application - Rezoning Application - Conditional Zoning Application - Variance Application - Appeal Application

§ 15.2-2204 of the Code of Virginia requires that a notice of pending action to be mailed to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie outside the Town; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property. The purpose of this form is to assist the applicant to collect the needed information from the Amherst County Commissioner of the Revenue's office.

Tax Map #	Physical Address	Owner's Name	Owner's Mailing Address

Applicants should use as many forms as are needed to provide the needed information.

Note: Applicants are reminded that §18.1-1002 of the Town Code requires signs describing pending action by the Planning Commission, Town Council or Board of Zoning Appeals to be posted when approval of a site plan, subdivision, special use permit, rezoning, conditional zoning, variance, or appeal is requested.

§ 15.2-2309. Powers and duties of boards of zoning appeals. Boards of zoning appeals shall have the following powers and duties:

2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

Va. Supreme Court reinforces rule on variances from zoning ordinance

The Virginia Supreme Court has made it clear that for a locality's board of zoning appeals to grant a variance from the zoning ordinance, the landowner applying for the variance must prove that not granting the variance would deprive him of all use of the property. The opinion was issued on April 23 in *Cochran v. Fairfax County Board of Zoning Appeals*.

The opinion decides three cases together. In the Fairfax case, the lot owner wanted to build into the setback areas of the lot, mainly for his convenience. The second case came from Pulaski. The lot owner's lot had public streets on three sides. He wanted to build a garage in the setback area, and proposed that the garage would be at the lot line, on the street.

Neighbors objected to the impact on sight distance. In the third case, the owner wanted to build a storage shed in a manner that wasn't allowed by the ordinance. He could have built it as an attached structure with no extra permits needed, but chose his method for his benefit. The facts showed that he had a serious illness and needed the shed for his daughter who was to become his caretaker during the illness.

The Supreme Court restated the rule for granting variances – that the power to grant a variance exists only where applying the zoning ordinance would deny the property owner all or nearly all use of his land. The court explained that variances exist in order to not render a zoning ordinance unconstitutional, by not having the ordinance create a taking of the use of the lot by its application in a specific case.

The court noted the language of the statute authorizing variances, Va. Code §15.2-2309, states that a variance requires a showing that "the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation..."

The court ruled that a BZA only has the power to grant a variance where the "effect of the zoning ordinance, as applied to the piece of property under consideration, would, in the absence of a variance 'interfere with all reasonable beneficial uses of the property, taken as a whole.'" Therefore, the court has made it clear that unless the ordinance would deny the use of the property, the BZA lacks any jurisdiction to grant a variance.

This case doesn't break new ground and doesn't create a new rule. It does serve to emphasize the need to have proof of the unconstitutionality of the ordinance if a variance is not granted. This also means that the fact that the lot owner has a compelling reason for the request, or that no adjoining lot owners will be harmed does not allow a variance, in itself.

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BZA Procedure Notes

09/23/2008

1	Application Reciept	Receive application per BZA bylaws. Only AFTER the application is in order, with fees and all materials required by the bylaws received, call the chairman of the BZA.
2		Organize a meeting as directed by the chairman for an initial review and setting the date, time and place of the required public hearing
3		Notify the applicant and the New Era Progress to advise when the first meeting is to take place.
4		Prepare and distribute agenda papers to Board members via mail.
5		Distribute case info to Planning Commission for review and comment.
6		Fax agenda to the New Era Progress as the official meeting notice.
7	First Meeting	Calculate earliest hearing date
8		On the day of the meeting, do reminder/quorum calls, set up the meeting room (gavel, pads/pencils, chairs, minutes of last meeting), take minutes.
9		Write minutes and circulate to Board members and draft to minutes book and case file.
10		Send a letter confirming the application has been received and when the hearing will be held to the applicant.
11		Fax the hearing notice to the paper; call to confirm receipt and note such on what was faxed.
12		Prepare list of adjoining property owners.
13		Send a notice to adjoining property owners and prepare affidavit of same.
14	Second Meeting	Prepare and post zoning sign on the site.
15		Prepare case writeup/analysis/report
16		Prepare and distribute agenda papers to Board members via mail.
17		On the day of the meeting, do reminder/quorum calls, set up the meeting room (gavel, pads/pencils, chairs, minutes of last meeting), take minutes.
18		Write minutes and circulate to Board members and draft to minutes book and case file.
19	Closeout	Send a letter confirming any decision to the applicant (closeout letter).
20		Remove/recycle zoning sign.
21		Secretary wraps up paperwork and closes the file.